



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/2380

Re: Property at Flat 2, 13 Bruce Street, Glasgow, G81 1TT (“the Property”)

Parties:

**Mr Michael Dolan, Mrs Michelle Dolan, 17 Montrose Street, Glasgow, G81 2JF
 (“the Applicant”)**

Ms Kay Doran, Flat 2 13 Bruce Street, Glasgow, G81 1TT (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. By Lease dated 20th November 2017 the Applicant let the Property to the Respondents.
2. The rent payable is £450.00 per calendar month payable in advance.
3. The Respondent fell into arrears of rent shortly after the commencement of the tenancy. While rental payments were being made, they were never for the full amount, in most cases being approximately £32.70 short per month. Over the period from November 2017 the arrears rose from £32.70 to £3,860.10.
4. Separately, the Applicant received correspondence from his mortgage lending company intimating that full repayment of the outstanding loan funds was required.

5. The Applicant determined that he required to sell the Property to realise funds to repay the mortgage company and, accordingly, served a notice in terms of Section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on the Respondent.
6. A Notice of terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
7. The Applicant thereafter presented an application to the Tribunal seeking an order for eviction.
8. The application to the Tribunal seeking an order for eviction referred to ground 2 (heritable creditor in possession wishing to sell), ground 8 (rent more than 3 months in arrears), 11 (persistent delay in paying rent) and 12 (some rent unpaid) of Schedule 5 of the 1988 Act. During the application process the Tribunal, while the application was accepted, intimated to the Applicant that there was no basis for an eviction in terms of ground 2 as, while the heritable creditor was wishing repayment of the loan funds, they had not repossessed the Property and, in relation to ground 8, that ground has now been repealed. The application was accepted by the Tribunal to proceed under grounds 11 and 12 only.

THE CASE MANAGEMENT DISCUSSION

9. A Case Management Discussion was assigned to take place at 10am on 17th November 2023. Initially, neither party participated. After enquiry was made by the Tribunal, Mr S McGlone, Westgate Estate Agents, Glasgow, dialled into the teleconference. The Tribunal convened at approximately 10.15am.
10. Very shortly after the Tribunal convened, in the absence of the Respondent, the Clerk of the Tribunal was made aware that the Tribunal had been contacted by the Respondent. She had wrongly attended at her local housing office believing the Tribunal was being conducted there. She had subsequently made contact with the Tribunal and information was provided to her to enable her to dial in to participate in the Case Management Discussion. In the circumstances, the Tribunal adjourned until 10.30am to afford her an opportunity to do so.
11. The Tribunal reconvened at 10.30am. The Respondent had not called in at that point. The Tribunal conference line, however, was left open to enable her to join the Case Management Discussion at any time as it progressed. The Case Management Discussion was

conducted between 10.30am and 10.50am. The Respondent did not enter the proceedings.

12. Mr McGlone, on behalf of the Applicant, moved the Tribunal to grant an order for eviction. It was accepted that, if such an order was granted, it would be subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and it would not be able to be enforced for a number of months.
13. In relation to the grounds of eviction themselves, it was noted that there were rent arrears of a significant level. The rent arrears amounted to £3,860.10. Arrears had been building up consistently since November 2017. Since then there was never a period of time during which the arrears had been cleared. They had never been reduced.
14. In the circumstances, both grounds 11 and 12 of schedule 5 of the 1988 Act were met.
15. Separately, Mr McGlone pointed out to the Tribunal that the Applicant did require to sell the Property. He had obtained an interest only mortgage. The interest only period of the mortgage had now expired. There was a significant capital sum due. The mortgage lender was demanding repayment. Correspondence from the mortgage lender had been provided to the Tribunal confirming that. The written application to the Tribunal advised that, due to the age of the Applicant, he was unable to secure alternative funding.
16. The Applicant had attempted to sell the Property to another investor with the Respondent as a sitting tenant. After considering the matter, the investor declined to proceed as it did not appear to be a financially viable option. It was advised by Mr McGlone that the rent on the Property is below market average. It is obvious that the rent has never been increased in the past 6 years since the lease commenced. In the circumstances, the Applicant had no alternative but to seek repossession with a view to selling the Property to clear his debt to the mortgage lender.
17. In relation to the personal circumstances of the Respondent, as far as Mr McGlone knew, she has an adult son living with her in the Property. He is between 25 and 30 years of age. The Respondent herself is approximately 50 years of age. Mr McGlone is not aware of any medical issues affecting her.

18. The Respondent is well aware of the rent arrears. She has had regular messages from the Applicant and on behalf of the Applicant in relation to the arrears. She has also had the most recent rent statement forwarded to her. She has never disputed the fact that rent arrears have arisen. Mr McGlone, indeed, advised the Tribunal that the Respondent is someone who is a good person and he would not expect her to challenge arrears which do exist and she has never done so.
19. At the conclusion of the Case Management Discussion the Respondent had still not participated in the Case Management Discussion. The Tribunal thereafter had a brief adjournment to enable its members to consider the decision to be made. Having considered matters, the Tribunal granted an order for eviction.
20. It was pointed out to Mr McGlone that, while the Tribunal was granting an order for eviction, firstly, it was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and would not be enforceable for a number of months and, separately, the Respondent would have the right to seek a recall of the decision if so advised.

FINDINGS IN FACT

21. The Tribunal found the following facts to be established:-
- a) By Lease dated 20th November 2017 the Applicant let the Property to the Respondents.
 - b) The rent payable is £450.00 per calendar month payable in advance.
 - c) The Respondent fell into arrears of rent shortly after the commencement of the tenancy. Over the period from November 2017 the arrears rose from £32.70 to £3,860.10.
 - d) The Applicant received correspondence from his mortgage lending company intimating that full repayment of the outstanding loan funds was required.
 - e) The Applicant requires to sell the Property to realise funds to repay the mortgage company.
 - f) A notice in terms of Section 19 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent.
 - g) A Notice of terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
 - h) The Respondent has persistently delayed paying rent which has become lawfully due.
 - i) Rent lawfully due was unpaid on the date proceedings were raised and when the notice in terms of s19 of the 1988 Act was served.
 - j) It is reasonable that an order for eviction is granted.

REASONS FOR DECISION

22. The Applicant is being put under pressure by his mortgage company to make repayment of a significant sum, being the capital of the mortgage loan advanced to the Applicant previously.
23. Documentary proof of the demand for repayment was provided by the Tribunal.
24. The Applicant is not in position to secure alternative funding to clear this debt. The Applicant, in the circumstances, requires to sell the Property to raise the necessary funds to do so.
25. The Applicant has made an attempt to sell the Property with the Respondent as a sitting tenant. He has been unable to do so.
26. The Respondent is in arrears of rent and has been consistently throughout the tenancy. The arrears are significant, amounting to more than 8 months worth of rent payments.
27. In the absence of the Respondent, there was no information available to the Tribunal to determine that it was unreasonable, in the circumstances, to grant an order for eviction.
28. Having regard to the situation the Applicant finds himself in, his desire to gain vacant possession and sell the Property is both understandable and reasonable.

DECISION

The Tribunal granted an order for eviction of the Respondent from the Property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

17 November 2023

Date